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Attorneys for Defendants, COUNTY OF SAN BERNARDINO,
ROBERT VACCARI and JAKE ADAMS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JONATHAN WAYNE BOTTEN, SR.;
TANJA DUDEK-BOTTEN;
ANNABELLE BOTTEN; and J.B., a
minor by and through his guardian
JONATHAN WAYNE BOTTEN, SR.,

Plaintiffs,

vs.

STATE OF CALIFORNIA; COUNTY
OF SAN BERNARDINO; ISAIAH
KEE; MICHAEL BLACWOOD;
BERNARDO RUBALCAVA;
ROBERT VACCARI; JAKE ADAMS;
and DOES 1-10 inclusive,

Defendants.

CASE NO. 5:23-cv-00257-JGB-SHK

Assigned for All Purposes to:
Hon. Kenly Kiya Kato– Courtroom #3

**FIRST STIPULATION TO MODIFY
SCHEDULING ORDER**

Complaint filed: February 16, 2023

1 Under Federal Rule of Civil Procedure 16(b)(4) and Local Rules 7-1 and 16-
2 14, Plaintiffs Jonathan Wayne Botten Sr., Tanja Dudek-Botten, Annabelle Botten,
3 and J.B., a minor by and through his guardian *ad litem* Jonathan Wayne Botten Sr.
4 (“Plaintiffs”) and Defendants Michael Blackwood, Isaiah Kee, and Bernardo
5 Rubalcava (“State Defendants”), County of San Bernardino, Robert Vaccari, and
6 Jake Adams (“County Defendants”) (collectively “Defendants”), stipulate for the
7 purpose of jointly requesting that the honorable Court modify the Scheduling Order
8 issued in this action. The parties seek to continue all the deadlines, including trial,
9 by seven months to allow the parties time to complete fact and expert discovery,
10 which in turn will affect the remaining deadlines.

11 When an act must be done within a specified time, the court may, for good
12 cause, extend the time with or without motion or notice if the court acts, or if a
13 request is made, before the original time expires. Fed. R. Civ. P. 6(b)(1)(A). A
14 scheduling order may be modified only upon a showing of good cause and by leave
15 of Court. *Id.* 16(b)(4); *see, e.g., Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
16 604, 609 (9th Cir. 1992) (describing the factors a court should consider in ruling on
17 such a motion). In considering whether a party moving for a schedule modification
18 has good cause, the Court primarily focuses on the diligence of the party seeking the
19 modification. *Johnson*, 975 F.2d at 609 (citing Fed. R. Civ. P. 16 advisory
20 committee’s notes of 1983 amendment). “The district court may modify the pretrial
21 schedule ‘if it cannot reasonably be met despite the diligence of the party seeking
22 the amendment.’” *Id.* (quoting Fed. R. Civ. P. 16 advisory committee notes of 1983
23 amendment). Good cause exists to modify the Scheduling Order because, despite the
24 parties’ diligent efforts, they will be unable to complete discovery by the current
25 deadline.

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1 1. On February 16, 2023, Plaintiffs filed their Complaint. (Dkt. No. 1).

2 2. On June 8, 2023, Plaintiffs filed a First Amended Complaint, the
3 operative complaint and the respective Defendants filed their Answers on September
4 12, 2023. (Dkt. Nos. 27, 52, and 53).

5 3. On December 21, 2023, the parties filed their Joint Rule 16(f) Report.
6 (Dkt. No. 55).

7 4. On February 14, 2024, the instant case was deemed related to another
8 case, 5:22-cv-00949-KK-SHK, L.C., et al. v. State of California, et al. (“Puga”) and
9 assigned from the Judge Jesus G. Bernal to Judge Kenly Kiya Kato. (Dkt. No. 58).

10 5. On February 28, 2024, the Court issued a Civil Trial Scheduling Order.
11 (Dkt. No. 60).

12 6. On April 9, 2024, the Court ordered that the instant Botten matter and
13 the related Puga matter be consolidated for the limited purpose of discovery. (Dkt.
14 No. 69). However, no dates and deadlines were changed in either case.

15 7. The parties continue to diligently conduct written discovery. The
16 parties have propounded and responded to multiple written discovery requests. The
17 parties had also previously agreed to schedule the depositions of Defendants Isaiah
18 Kee, Michael Blackwood, Bernardo Rubalcava, Robert Vaccari, and Jake Adams
19 (“Defendant Officers”) for February 2024.

20 8. On February 5, 2024, Defense Counsel for County Defendants were
21 advised that the District Attorney’s Office was still investigating the underlying
22 incident and had not yet completed their review and therefore was not yet prepared
23 to issue a public determination. Because all individual defendants in this case were
24 still pending resolution on the criminal matter, Defense counsels requested and
25 Plaintiffs agreed, that it would be in the best interest of all parties to allow the DA to
26 conclude its investigation and release its public issuing decision on the matter before
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28

1 re-noticing the depositions of the defendant officers to preserve their Fifth
2 Amendment rights. We were advised to follow up in two months.

3 9. On April 29, 2024, Defense Counsel for County Defendants were
4 advised by the DA's Office that the criminal investigation review and determination
5 was being finalized for final review and that an issuing decision should be made
6 public in approximately six weeks (mid-June 2024).

7 10. Without the depositions of the Defendant Officers, the parties' retained
8 experts cannot provide full and complete opinions, such that the parties will not be
9 prepared to disclose expert witnesses by the current deadline.

10 11. The State Defendants request that the deadline to complete mediation
11 occur after dispositive motions are resolved. State Defendants believe they have
12 meritorious grounds to move for summary judgment and are unlikely to offer any
13 substantial amount of money to resolve this matter before their intended dispositive
14 motion is resolved. Requiring the parties to engage in mediation beforehand will be
15 unproductive and a waste of time and resources. The State Defendants will be in a
16 better position to engage in realistic and serious settlement discussions if this case
17 survives summary judgment.

18 12. The parties agree that it is in the best interest of all parties to continue
19 all case management dates to allow the parties additional time to complete
20 discovery, conduct expert discovery, and adequately prepare for trial. The parties
21 further agree that given Plaintiffs' previous efforts to secure dates for the
22 depositions of the individual defendant officers, these depositions will proceed
23 before any other witness or party depositions.

24 13. This Stipulation is the parties' first request to modify the Scheduling
25 Order.

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14. Accordingly, in light of the foregoing, the parties hereby stipulate that good cause exists, and jointly request that the Court modify the Scheduling Order as outlined below.¹:

15. Alternatively, the parties request that the current discovery deadlines in the instant matter adjust to be aligned with the discovery deadlines in Puga. For example, in the instant Botten matter, the parties have a Fact Discovery Cut-Off in July and an Expert Discovery Cut-Off in September whereas in Puga, the parties have a single All Discovery Cut-Off in September. While the parties request a modification of all remaining deadlines, the parties request that at a minimum, the Botten discovery deadlines be modified to align with the discovery deadlines in Puga given the Court's recent consolidation order. (Dkt. No. 69).

Case Management Event	Prior Date/Deadline	Proposed New Date/Deadline
Fact Discovery Cut-Off (including hearing of discovery motions) (Thursday)	July 11, 2024	March 13, 2025 (All Discovery Cut-Off)
Deadline for Initial Designation of Expert Witnesses	July 25, 2024 (<u>Puga</u> July 29, 2024)	January 20, 2025
Deadline for Designation of Rebuttal Expert Witnesses	August 22, 2024 (<u>Puga</u> August 26, 2024)	February 17, 2025
Expert Discovery Cut-Off (including hearing of discovery motions) (Thursday)	September 19, 2024 (<u>Puga</u> September 9, 2024)	March 13, 2025 (All Discovery Cut-Off)

¹ The deadlines have been modified to adhere to this Court's most recent Civil Standing Order, Order Setting Scheduling Conference, and Civil Trial Scheduling Order, issued on April 23, 2024. (Dkt. No. 70).

1	Dispositive Motion Hearing Cut-	October 24, 2024	June 26, 2025
2	Off (Thursday)		
3	Last Day to Conduct Settlement	October 24, 2024	July 10, 2025
4	Final Pretrial Conference	January 16, 2025	September 11, 2025
5	(Thursday at 10:30 a.m.)		
6	(18 days before trial)		
7	Jury Trial	February 3, 2025	September 29, 2025
8	(Monday at 8:30 a.m.)		

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10 **IT IS SO STIPULATED.**

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12 DATED: May 24, 2024

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13
14
15 By: /s/ Amy R. Margolies
16 **SHANNON L. GUSTAFSON**
17 **AMY R. MARGOLIES**
18 **ANITA K. CLARKE**
Attorneys for Defendant,
COUNTY OF SAN BERNARDINO
ROBERT VACCARI, and JAKE ADAMS

19
20 DATED: May 24, 2024

LAW OFFICES OF DALE K. GALIPO

21
22
23 By: /s/ Hang D. Le
24 **Dale K. Galipo**
25 **Hang D. Le**
Attorneys for Plaintiffs

1 DATED: May 24, 2024

ROB BONTA
Attorney General of California
CHRISTINE E. GARSKE
Supervising Deputy Attorney General

2
3
4 */s/ Diana Esquivel*

5 **DIANA ESQUIVEL**
Deputy Attorney General
6 *Attorneys for Defendants Blackwood, Kee, and*
Rubalcava

7
8 *The filer, Amy R. Margolies, hereby attests that all other signatories listed,
9 and on whose behalf the filing is submitted, concur with the filing's content, and
10 have authorized.

11 DATED: May 24, 2024

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12
13
14 By: */s/ Amy R. Margolies*
15 **SHANNON L. GUSTAFSON**
16 **AMY R. MARGOLIES**
17 **ANITA K. CLARKE**
Attorneys for Defendant,
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18 **ROBERT VACCARI, and JAKE ADAMS**